

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3M COMPANY,

Plaintiff,

-against-

PERFORMANCE SUPPLY, LLC,

Defendant.

1:20-cv-02949 (JLR) (JW)

**MEMORANDUM OPINION
AND ORDER**

JENNIFER L. ROCHON, United States District Judge:

On April 10, 2020, Plaintiff 3M Company (“Plaintiff”) commenced this action asserting, among other claims, trademark infringement and false advertising against Defendant Performance Supply, LLC (“Defendant”). *See generally* ECF No. 1 (“Complaint”). The Complaint alleges that Defendant used Plaintiff’s “3M” trademarks to commit a false and deceptive price-gouging scheme on consumers, including government entities, during the COVID-19 pandemic. *See id.* On May 4, 2020, the Court granted Plaintiff’s motion for a preliminary injunction. ECF No. 22.

On May 21, 2020, the United States Attorney for the Southern District of New York filed a criminal complaint against Defendant’s principal, and further proceedings in this action were deferred pending prosecution of that criminal complaint. *See* ECF Nos. 28, 30, 31. On September 29, 2022, Plaintiff reported that the criminal case had concluded, and that this case should proceed. ECF No. 33. Defendant has not filed an answer or otherwise appeared.

On November 29, 2022, Plaintiff requested and the Clerk of Court entered a certificate of default. *See* ECF No. 39. On January 13, 2023, Plaintiff moved for default judgment and a permanent injunction. ECF No. 45. Defendant did not appear or otherwise oppose Plaintiff’s motions. On April 26, 2023, Magistrate Judge Jennifer E. Willis issued a Report and

Recommendation (“Report”). ECF No. 50. The Report recommends that the Court grant Plaintiff’s motions for default judgment and a permanent injunction. *Id.* The Report warns, in bold text, that failure to timely object within 14 days of being served would result in waiver of the right to object and preclude appellate review. *Id.* at 14. Plaintiff served the Report on Defendant on April 27, 2023. ECF No. 30. Neither party has filed any objections to the Report.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see* Rule 72(b); *Grassia v. Scully*, 892 F.2d 16, 19 (2d Cir. 1989). Parties may object to a magistrate judge’s recommended findings “[w]ithin 14 days after being served with a copy of the recommended disposition.” Rule 72(b)(2). “In a case such as this one, where no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Lifeguard Licensing Corp. v. Kozak*, 371 F. Supp. 3d 114, 118 (S.D.N.Y. 2019) (internal citation omitted); *Lee v. Lending Tree*, 473 F. Supp. 2d 435, 436 (S.D.N.Y. 2007) (“The district court adopts a Magistrate Judge’s report and recommendation when no clear error appears on the face of the record.”). A party’s “failure to object timely to a report waives any further judicial review of the report” so long as the party received “‘clear notice’ of the consequences of their failure to object.” *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see Lee*, 473 F. Supp. 2d at 436.

Here, the deadline to object to the Report has passed and no party has filed any objection. The Court has therefore reviewed the Report for clear error. *See Lifeguard Licensing Corp.*, 371 F. Supp. 3d at 118; *Lee*, 473 F. Supp. 2d at 436. The Court finds that the Report’s reasoning and conclusions are sound, grounded in fact and law, and not clearly erroneous.


Accordingly, the Court adopts the Report in its entirety and GRANTS Plaintiff’s motion for default judgment and GRANTS Plaintiff’s motion for a permanent injunction. The Court will issue a Final Judgment and Permanent Injunction separately.

The lack of any timely objections, in light of the clear notice provided in the Report, precludes appellate review of this decision. *See Frank*, 968 F.2d at 300; *Lee*, 473 F. Supp. 2d at 436.

The Clerk of Court is respectfully directed to close this case.

Dated: May 16, 2023
New York, New York

SO ORDERED.



JENNIFER L. ROCHON
United States District Judge